

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

Claims 1-46 were pending in this application. By this Amendment, Applicants cancel claims 20, 23 and 31, add claim 47 and amend claims 14, 21, 30, 32, 38 and 43. Particularly, claim 14 has been amended to include the subject matter of claim 20, claim 30 has been amended to include the subject matter of claim 31, and claims 21, 32, 38 and 43 have been amended to correct matters of form. New claim 47 includes the subject matter of allowable claim 23 and its base claim. Accordingly, claims 1-19, 21, 22, 24-30 and 32-47 will be pending herein upon entry of this Amendment. For the reasons stated below, Applicants respectfully submit that all claims pending in this application are in condition for allowance.

Applicants also amend the specification and the drawings to conform with each other. Particularly, Applicant amends Fig. 1 as described above in the Amendments to the Drawings section to conform with the description of Fig. 1 provided in the specification. Similarly, applicants amend the specification to refer to element 20 of Fig. 1 and to include the text of step 36 of Fig. 3. Applicants further amend the specification to correct informalities and also to improve form when referring to priority level 1 and priority level 4 in Figs. 5A and 5B.

In the Office Action, the Examiner objected to the specification due to informalities; rejected claims 1-13, 26-29, 36 and 37 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,574,977 to Joseph et al. ("Joseph") in view of U.S. Patent No. 6,421,335 to Kilkki et al. ("Kilkki"); rejected claims 14-22, 24 and 25 under 35 U.S.C. § 103(a) as unpatentable over

Joseph in view of Kilkki and further in view of U.S. Patent No. 5,752,193 to Scholefield et al. ("Scholefield"); and objected to claim 23 as being dependent upon a rejected base claim. The Examiner indicated claim 23 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for the indication of allowable subject matter and, as described above, add new claim 47 to include the subject matter of allowable claim 23 including all of the limitations of its base claim and any intervening claims.

Incomplete Office Action

At page 7 of the Office Action, the Examiner rejected claims 30-35, 38-42 and 43-46 as being method claims corresponding to claims 14-22, 24 and 25. However, independent claims 30, 38 and 43 contain several limitations that are not recited in claims 14-22, 24 and 25, and none of these claims were addressed in the rejection. For example, claim 38 recites a method of transmitting an e-mail communication comprising steps (a) through (g). The rejection does not specify how the cited references allegedly teach any of steps (a) through (g) or even how the references relate to e-mail communications. Similarly, claim 43 relates to transmitting data packets of voice communication comprising steps (a) through (d). The rejection does not specify how the references relate to voice communications specifically or the specific limitations of claim 43. Step (c), for example, discloses "transmitting data packets from other wireless communications transactions on the access link during periods of time when there are gaps in the transmission of the communication." Because the rejection does not address how any prior art reference allegedly teaches the features recited in independent claims 30, 38 and 43 (or claims

B

31-34, 39-42 or 44-46), Applicants do not have a factual basis upon which to respond.

Accordingly, to the extent that the Examiner rejects any one of claims 30, 32-35, 38-42 and 43-46 in a subsequent Office Action, Applicants kindly request the Examiner **NOT to deem such an Office Action as final**. Particularly, any rejection of these claims would raise new issues for the Applicants to consider and to address.

Rejection of the Claims Under 35 U.S.C. § 103(a) over Joseph in view of Kilkki

Claims 1-13, 26-29, 36 and 37 were rejected under 35 U.S.C. § 103(a) as unpatentable over Joseph in view of Kilkki. Applicants respectfully disagree with the Examiner's arguments and conclusions, and respectfully submit that a *prima facie* case of obviousness has not been established.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim elements. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Third, there must be a reasonable expectation of success. *See* M.P.E.P. § 2143.

A combination of Joseph and Kilkki fails to teach or suggest each and every element of Applicants' claimed invention.

Joseph, for example, discloses a system for providing Priority Access and Channel Assignment (PACA) to designated subscribers in a wireless communications. As shown in Fig. 4B and described at col. 2, lines 46-49, Joseph discloses that PACA users with the highest

priority level are assigned a channel first. PACA users within each priority level are assigned a channel on a first-come, first-serve basis.

Joseph discloses a system for checking whether a channel is "available" and, if available, assigns who receives the available channel by determining a user with the highest priority in the queue. (See col. 7, ll. 42-47.) Because Joseph only assigns a channel (and thus can only schedule a transmission) when a channel is currently available, Joseph does not teach or suggest scheduling an transmissions when all of the plurality of access links are occupied. Accordingly, Joseph does not teach or suggest at least Applicants' claimed access control manager for scheduling transmission of transactions "when all of the plurality of access links are occupied," as recited in claim 1. Joseph also does not teach or suggest at least "discontinuing the transmission of the transaction of lower priority," or "authorizing the transmission of the requested transaction," as recited in claim 1.

The Examiner relies upon Kilkki at Fig. 12 and col. 16, lines 4+ for allegedly disclosing that transactions of lower priority are temporarily discontinued in favor of higher priority transaction when network capacity reaches a predetermined level. Particularly, the portions of Kilkki relied-on are taken out of context with the entire disclosure of that reference.

Kilkki teaches that packets are transmitted by a CDMA protocol only when they have an acceptable priority. For example, Fig. 12 of Kilkki shows four processes: (1) establishing a nominal bit rate; (2) calculating relative packet priority; (3) calculating allowable packet priority; and (4) transmitting packets having acceptable priority. The "allowable packet priority" is a calculation that determines how many users can use the system so that the signal-to-noise ratio is

not prohibitively elevated. (See col. 11, line 51 to col. 12, line 2.) In other words, it determines the load of the CDMA connection to determine whether a packet may be transmitted. For example, Kilkki discloses at col. 16, lines 6-10 "where the packet priority is greater than or equal to the allowable priority the packet is transmitted 229; otherwise it is not. Where the packet is not transmitted, the transmission can be temporarily suspended, or the packet can be discarded..."

Thus, Kilkki simply discloses transmitting an incoming packet, or allowing a user to use the system, if its priority exceeds a threshold. If not, the users request (i.e., the incoming transmission) is suspended or delayed. That is, like Joseph, Kilkki does not teach or suggest scheduling transmission of transactions when all of the plurality of access links are occupied. Instead, Kilkki discloses that an incoming packet is not sent if all of a plurality of access links are occupied.

The Examiner appears to characterize this delay of an incoming transmission as a discontinuation of a transaction of lower priority. However, Kilkki discloses waiting or suspending an incoming transmission when its priority level does not exceed a threshold, not discontinuing a transaction of a lower priority to transmit an incoming transmission having a higher priority.

In summary, Kilkki does not teach or suggest at least Applicants' claimed access control manager for scheduling transmission of transactions "when all of the plurality of access links are occupied," "discontinuing the transmission of the transaction of lower priority," or "authorizing the transmission of the requested transaction," as recited in claim 1. Accordingly, a combination

of Joseph and Kilkki fails to teach or suggest all the claim limitations of claim 1, and the § 103(a) rejection of claim 1 should be withdrawn. The rejection of claims 2-13 should be withdrawn as well, at least in view of their dependence from allowable claim 1.

For similar reasons, independent claims 26 and 36 are allowable over a combination of Kilkki and Joseph. For example, a combination of Joseph and Kilkki fails to teach or suggest "evaluating network capacity of the wireless network by determining whether there is an available access link," "authorizing a transmission if the requested transmission is of higher priority than another transaction that is being transmitted when there is no available access link in the wireless network, and "discontinuing the transmission of the transaction of lower priority," as recited by claim 26. Similarly, a combination of Joseph and Kilkki does not disclose "transmitting the transaction data when there is either an available access link ... or another transaction being transmitted at a priority level lower than the designated transmission priority level for the transaction; wherein the transaction of a lower priority is discontinued to allow for transmission of a transaction at a higher priority level," as recited in claim 36. Because a combination of Joseph and Kilkki does not teach or suggest all the limitations recited in independent claims 26 and 36, claims 26 and 36 are allowable over a combination of Joseph and Kilkki. Claims 27-29 and 37 are allowable as well, at least in view of their dependence from allowable claims 26 and 36.

Rejection of the Claims Under 35 U.S.C. § 103(a) over Joseph in view of Kilkki

Claims 14-22, 24, 25, 30-35, 38-42, and 43-46 were rejected under 35 U.S.C. § 103(a) as unpatentable over Joseph in view of Kilkki and further in view Scholefield.

Claim 14, for example, recites a wireless communication device including at least one user application, a data buffer and a communications manager. The Examiner did not address how a combination of Joseph and Kilkki supposedly teaches the claimed at least one user application or the claimed data buffer. Accordingly, Applicants have no factual basis upon which to refute the Examiner's allegations.

Notwithstanding the above-mentioned claim limitations, the Examiner admits that the combination of Joseph and Kilkki fails to teach at least the claimed communications manager. The Examiner asserts that Scholefield teaches the claimed communications method including a control message including an identification code for the wireless communications device. The Examiner transcribes a lengthy portion of Scholefield at page 7 of the Office Action to support his allegation that Scholefield teaches the claimed control message. However, nothing in the transcribed portion states that a control message includes an identification code for the wireless communications device. Instead, Scholefield discloses at col. 5, lines 28-33 sending a message sequence for uplink, the message including priority level and other information. Although Scholefield discloses that identifiers may accompany the message, Scholefield does not teach or suggest that an identifier code for the wireless communications device is provided.

Claim 14 further recites that the "transmission of a first transaction is discontinued when the wireless network is at full capacity and the wireless network receives a request for a second transaction having higher priority." As described above, Joseph and Kilkki do not disclose or suggest at least discontinuing transmission of a first transaction when the wireless network is at full capacity and the wireless network received a request for a second transaction. Rather,

Joseph and Kilkki appear to teach that the system does not allow additional transmissions when the network is at full capacity. Scholefield also fails to disclose or suggest as least discontinuing a first transmission when the wireless network is at full capacity and receives a request for a second transaction having a higher priority. Accordingly, claim 14 is allowable over the cited prior art. Claims 15-22, 24 and 25 are allowable as well, at least in view of their dependence from claim 14.

Regarding claims 30-35, 38-42 and 43-46, the Examiner summarily rejected these claims as being method claims corresponding to claims 14-22, 24 and 25. However, this characterization of the claims is incorrect. Independent claims 31, 38 and 43 contain several limitations that are not recited in claims 14-22, 24 and 25, and none of these limitations were addressed by the Examiner.

Claim 30, for example, discloses a method for transmitting a transaction including, in part, "transmitting the transmission request to an access control manager in the wireless network to request authorization...", "receiving an authorization message to transmit transaction data..." and "transmitting transaction data from the data buffer corresponding to the authorized transaction until the wireless communications device either completes the transmission of the transaction or receives a notification from the wireless network to discontinue transmission."

In contrast, the cited prior art references, taken singularly or in combination, fail to teach or suggest at least "receiving an authorization message to transmit" or "receiv[ing] a notification from the wireless network to discontinue transmission," as recited in claim 30.

Similarly, claim 38 recites a method of transmitting an e-mail communication. The Examiner failed to point out how the cited prior art references allegedly relate specifically to e-mail communications, let alone how the cited references teach or suggest at least "designating a transmission priority level for the e-mail communication," "placing data from the e-mail communication into a data buffer," "transmitting a transmission request," "receiving an authorization message," "transmitting e-mail communication data from the data buffer corresponding to the authorized transaction until the wireless communications device either completes the transmission of the transaction or receives a notification from the wireless network to discontinue transmission," "placing e-mail communication data transmitted over the wireless network into a temporary memory space," and "sending the e-mail communication in the internet to the e-mail server once all e-mail communication data is placed into the temporary memory space."

Likewise, claim 43 relates to a method of transmitting data packets of voice communications. The Examiner did not point out how the references allegedly disclose features in independent claim 43. Indeed, a combination of the cited prior art, does not teach or suggest at least "transmitting data packets from other wireless communications transactions on the access link during periods of time when there are gaps in the transmission of the communication," and "suspending transmission of the data packets for a wireless communication transaction that is at a higher priority level than the voice communication being transmitted."

Because a combination of Joseph, Kilkki and Sholefield fails to teach or suggest all the claim limitations of independent claims 30, 38 and 43, the § 103(a) rejection of the claims should



Serial No.: 09/559,594
Art Unit: 2665

Attorney's Docket No.: BS99-185
Page 34

be withdrawn and the claims allowed. Dependent claims 32-35, 39-42 and 44-46 should be allowed as well, at least in view of their dependence from claims 30, 38 and 43, respectively.

Allowable Subject Matter

Applicant has rewritten claim 23 as new claim 47. Accordingly, new claim 47 is in *prima facie* condition for allowance.

In view of the foregoing all of the claims in this case are believed to be in condition for allowance. Should the Examiner have any questions or determine that any further action is desirable to place this application in even better condition for issue, the Examiner is encouraged to telephone applicants' undersigned representative at the number listed below.

SHAW PITTMAN LLP
1650 Tysons Boulevard
McLean, VA 22102
Tel: 703/770-7581

Respectfully submitted,

SAMUEL N. ZELLNER ET AL.

Date: December 5, 2003

By: Tara Hutchings
Tara L. Hutchings (Bleech)
Registration No. 46,559

Attachments:
Replacement Sheet
Annotated Sheet Showing Changes

MAO/TLH/rrs

Figure 1

Annotated Sheet Showing Changes

